IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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W.P.NOs. 21597 of 2002 and 11980 of 2004

W.P.NOs. 21597 of 2002

Between:

Dr.M.Vani Manohar S/o.Late Venkata Rama Narsaiah
The Madhu Malancha Degree College, Belal,Shakarnagar-503180

..... PETITIONER

AND

1 Secretary, Higher Education, Secretariat, Hyderabad.
2 Commissioner of Collegiate Education, Nampally, Hyderabad.
3 Regional Joint Director of Higher Education, Kishanpura, Warangal
4 The Madhu Malancha Degree College, Belal-Shakarnagar
Nizamabad District rep., by its Correspondent

5. Y.Raghavaiah S/o Adinarayana,

aged about 56 years, working as lecturers in Commerce at

Madhu Malancha Degree College, Belalshakarnagar, Nizamabad District.

(R5 is impleaded as per Court order dated 13-07-2005 in
WPMP NO.19324 of 2003)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction especially one in the nature of Mandamus:-i] declaring the inaction of the resposndents 1 and 2 to approve the appointment/promotion of the petitioner as Principal of Madhu Malancha Degree

College, Belal-Shakarnagar,Nizamabad District made by properly constituted selection committee on 5.3.2001 [ii] compelling the respondents to accord approval of the appointment/promotion of the petitioner as Principal of Madhu Malancha Degree College, Balal, made on 5.3.2001 and grant all consequential reliefs including the payment of salary in the scale of pay attached to the Principal of a Degree college.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent Nos.1 to 3: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.4: Mr.P.V.S.S.S. RAMA RAO

WRIT PETITION NO : 11980 of 2004

Between:

Dr. M. Vani Manohar, S/o Late Venkata Rama Narasaiah,
Madhu Malancha Degree College, Belal, Shakkarnagar, Nizamabad - 503 180.

..... PETITIONER

AND

1 State of Andhra Pradesh, rep. by its Secretary, Higher Education, Secretariat, Hyderabad.
2 Commissioner of Collegiate Education, Nampally, Hyderabad.
3 Regional Joint Director of Higher Education, Kishanpura, Warangal.
4 Madhu Malancha Degree College, Belal, Shakarnagar, Nizamabad District, rep. by its Correspondent.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ or order or direction especially one in the nature of mandamus: (i) declaring the Memo No. 12096/CE.II-2/2001-04 dated 29-4-2004 as illegal, arbitrary and without jurisdiction and set aside the same; (ii) to declare that the petitioner is a regular Principal of the Madhu Malancha Degree College, Belal Shakkarnagar, Nizamabad District w.e.f. 7-3-2001 as has been selected as a regular Principal on 5-3-2001 by a duly constituted Selection Committee after following the procedure prescribed; (iii) compel the respondents to pay the petitioner the UGC scale of pay attached to the post of Principal from 7-3-2001 upto date after deducting the amounts already drawn.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent Nos.1 to 3: GP FOR HIGHER EDUCATION

Counsel for the Respondent No.4: MR P.V.S.S.S. RAMA RAO

The Court made the following:

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COMMON ORDER:

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Since the issue involved in these two writ petitions is one and the same, they are being disposed of by a common order.

The petitioners in these two writ petitions are one and the same. W.P.No.21597 of 2002 is filed to declare the inaction of the respondents 1 and 2 to approve the appointment/promotion of the petitioner as Principal of fourth respondent-college in pursuance of the selection committee recommendation dated 05-03-2001 as illegal and arbitrary. Whereas W.P.No.11980 of 2004 is filed to declare the Memo No.12096/CE.II-2/2001-04 dated 29-04-2004 as illegal and arbitrary and to declare that the petitioner is a regular Principal of the fourth respondent-institute and also to compel the respondents to pay the petitioner the UGC scale of pay attached to the post of Principal from 07-03-2001 up to date after deducting the amounts already drawn.

The brief facts that are necessary for disposal of the present two writ petitions may be stated as follows:

The petitioner was appointed as a Junior Lecturer in the fourth respondent-college on 20-07-1974 and thereafter as a Lecturer in Commerce in Degree College of the same institute on 16-06-1976. After putting 28 years of service, the petitioner was appointed as FAC Principal on 03-01-1995 when one Sri Y.Raghavaiah, impleaded as fifth respondent herein, tendered his resignation to the post of In-charge Principal stating that he has no interest in the administrative post. After obtaining permission from the Commissioner of Collegiate Education to fill up the vacant post of Principal, the management constituted a selection committee. On the basis of the recommendations of the selection committee, the office order dated 05-03-2001 was issued by the Management appointing the petitioner as Principal of the fourth respondent-college and the petitioner joined on

07-03-2001. As the petitioner was not being paid the scale of pay attached to the post of Principal according to the latest U.G.C. scales of pay and was being paid the pay attached to

the post of Lecturer, he submitted a representation dated

01-10-2002 to the management requesting to pay his salary according to the latest U.G.C. scales of pay. The management by its reply dated 10-10-2002 informed that they sought approval of his appointment from the Commissioner and as soon as

the approval is received, they would consider his request. The petitioner states that the Nizam Sugar Factory, which is maintaining the fourth respondent-college, is trying to hand over the college to the Government. If the college is to be handed over to the Government, the petitioner must be taken into the Government Service in the capacity of the Principal.

The fourth respondent-college was taken over by the Government on 30-07-2003. By an order dated 29-04-2004 vide memo No.12096/CE-II-2/2001-4 passed by the Commissioner of Collegiate Education-second respondent, the request of the petitioner was rejected. In pursuance of the interim orders dated 24-07-2003 in W.P.M.P.No.17847 of 2003 in W.P.No.21597 of 2002, the petitioner is continuing as

Principal in the fourth respondent-college. The impugned memo dated 29-04-2004 turned down the request of the management to drop the DCE proceedings and to approve the promotion of the petitioner as Principal is not feasible of compliance as the college is now taken over by the Government. He further states that as he was discharging the duties of a Principal (FAC) from 03-01-1995 till 06-03-2001 and from 07-03-2001 onwards as a regular Principal, his request to declare him as regular Principal shall be considered, but the respondents vide memo dated 29-04-2004 rejected the same. Hence, the present writ petitions.

A counter affidavit has been filed by the respondents 1 to 3 admitting that in pursuance of the interim orders of this Court dated 01-11-2002, the Government vide Memo No.12096/CE.III.2/2001-4, dated 29-04-2004 passed orders disposing of the representation of the fourth respondent-college to the effect that the request of the fourth respondent-college to drop the second respondent proceedings i.e., to re-convene the Departmental Promotion Committee again for selection of Principal and to approve the promotion of the petitioner as Principal is not feasible of compliance as the management of the college has been taken over by the Government. Accordingly, the request was rejected and the representation was disposed of.

The appointment of Principals in private aided colleges is governed in terms of G.O.Ms.No.127, Education dated 07-06-1993. The Government in Memo No.89/CEII.2/95-1, education dated 27-01-1995 issued orders clarifying that in case of private aided colleges in the State, the first three senior most lecturers be considered for promotion to the post of Principal and till such appointments are made one of the three senior most lecturers be kept in charge of the vacant post of principal. Further, the Government in a memo dated 17-

04-1999 is also issued instructions that the private managements have to follow the above Government Orders and violation of such orders to be viewed seriously and in failure to follow the Government rules would result disciplinary action against such managements. The Departmental Promotion Committee having well aware of these instructions, selected the petitioner as principal of the fourth respondent-college irregularly in the meeting held on

05-03-2001, who is the second person in the seniority list, overlooking the senior most person Sri Raghavaiah, stating that he does not possess Ph.D. qualification as per the terms of G.O.Ms.No.208, dated 29-06-1999 which is not applicable to the private aided colleges. Therefore, the second respondent directed the Correspondent of the fourth respondent-college to conduct fresh meeting of the Departmental Promotion Committee in terms of G.O.Ms.No.127, dated 07-06-1993 considering three senior most lecturers, vide proceedings Rc.No.682/AdmnV-3/2001, dated 30-07-2001. Since the selection of the petitioner was not approved by the Department, he is not a regular principal, but he is continuing on the strength of the court orders. The request of the erstwhile management for approval of selection of the petitioner was already decided stating that the selection was not in accordance with the procedure laid down in G.O.Ms.No.127, dated 07-06-1993 and communicated vide proceedings dated 30-07-2001 duly directing the correspondent to conduct fresh Departmental Promotion committee for selecting a principal by following the Rules. Therefore there are no grounds to interfere with the impugned order.

The learned counsel appearing for the petitioner contended that the petitioner was selected by a duly constituted selection committee as Principal on 05-03-2001 and thereafter he took charge on 07-03-2001; that the petitioner is fully qualified for the post of Principal and the procedure followed in selection

was as per G.O.Ms.No.208, dated 29-06-1999; that in spite of recommendations by the selection committee, the same is not approved by the competent authority and hence he prays to allow the writ petition.

On the other hand, the learned Government Pleader appearing for the respondents 1 to 3 contended that G.O.Ms.No.127, dated 07-06-1999 prescribes the procedure for selection of a Principal and that procedure has not been followed by the selection committee; that G.O.Ms.No.208, dated 29-06-1999 which was applied by the selection committee does not relate to selection procedure, but it applies to the extension of pay scales; that when the recommendations of the selection committee have been forwarded to the competent authority, the competent authority by its proceedings dated 30-07-2001 returned the file with specific direction to the fourth respondent to conduct fresh selection in accordance with law, the same has become final and therefore the writ petition is devoid of merit.

The petitioner in W.P.M.P.No.19324 of 2003 got impleaded as respondent No.5.

The fifth respondent tendered resigning for the post of In-charge Principal, which was accepted by the fourth respondent on 03-01-1995 and the charge was handed over on protest, but that does not mean he gave up the claim for the post of Principal. Being fifth respondent as senior among the lecturers, he ought to have been appointed as a Principal and therefore he prays to dismiss the writ petition.

According to the petitioner, he possesses the qualification of M.Com., with Doctorate in Commerce. He has more than 20 years of experience of service. He was also appointed as a Full Additional Charge Principal on 03-01-1995 as the unofficial respondent No.5 is resigned to the post of In-charge Principal stating that he has no interest on administrative post. After obtaining necessary permission from the competent authority, the management of the fourth respondent-college constituted a

selection committee and the selection committee selected the petitioner as a Principal. On the basis of the recommendations of the selection committee, the fourth respondent issued office order dated 05-03-2001 appointing him as a Principal and as such he joined in the post on 07-03-2001.

Admittedly, the fourth respondent-college was taken over by the Government on 16-03-2004. It is not disputed before this Court that the selection of Principal post of the fourth respondent-college was considered basing on G.O.Ms.No.208, Higher Education (UE.II.1) Department, dated 29-06-1999.

For the post of Principal a Master's Degree with at least 55% of the marks, Ph.D. or equivalent qualification and total experience of 15 years of teaching are conditions precedent. But the said qualification is applicable only in case of direct recruitment. The said G.O. further directs to extend the revised U.G.C. scales of pay to the teachers. Therefore, the said G.O., as rightly contended by respondents 1 and 3, is not relevant for selection of a Principal for consideration in the promotion. But the appointment of Principals in a private aided colleges is governed by the terms of G.O.Ms.No.127 Education dated 07-06-1993 whereunder the State Government issued orders stating that the first three senior most lecturers shall be considered for promotion to the post of Principal. Admittedly fifth respondent is the senior most lecturer and he was kept as In charge

Principal. The Government in Memo No.89/CEIII-1/95-1, dated 27-01-1995 issued orders to consider the first three senior most lecturers for the post of Principal. The departmental promotion committee overlooking the seniority of the fifth respondent on the ground that he does not possesses Ph.D. qualification in terms of G.O.Ms.No.208, dated 29-06-1999 disqualified him, but the said G.O. has no application. Perhaps that is the reason why the Commissioner of Collegiate Education-second respondent by proceedings dated 30-07-2001 in Rc.No.682/AdmnV-3/2001 came to conclusion that on verification of the minutes of

the Departmental Promotion Committee held on 25-03-2001, it is observed that the selection of the Principal post has been considered basing upon G.O.Ms.No.208, dated 29-06-1999 but not as per G.O.Ms.No.127 Education dated 07-06-1993 as per the instructions issued in the commissioner's proceedings in Rc.No.1816/PC.III-3/95, dated 03-06-1997. In the above circumstances, the Commissioner of Collegiate Education, directed the correspondent of the fourth respondent-college to conduct fresh selection by constituting a Departmental Promotion Committee for promotion of Principal post in terms of G.O.Ms.No.127 Education, dated 07-06-1993 and record all the facts in the Departmental Promotion Committee minutes considering the first three senior lecturers for the post of Principal in thirty days. The said proceedings have not been challenged till today by the petitioner. Therefore, the question of approval by the competent authority as contended by the learned counsel for the petitioner does not arise in view of the fact that the second respondent directed the management to conduct fresh selection in accordance with G.O.Ms.No.127 Education dated 07-06-1993.

It is contended by the learned counsel for the petitioner since the petitioner is not willing to work for the administrative post of Principal, his name was not considered and as a matter of fact the petitioner tendered his recognition when he was kept as In-charge Principal. As a matter of fact, the fifth respondent handed over the charge under protest. Since he was appointed as In-charge Principal, some of the senior colleagues objected to R-5 In-charge Principal to maintain confidential reports. Therefore, in those circumstances, he requested the management to relieve him from In-charge Principal immediately in agony. Therefore the ground on which the rejection of the fifth respondent is made that he has no interest in the administration is not tenable and correct. Under what circumstances he has tendered his recognition has not been taken into consideration by the selection committee. No doubt against the proceedings of the Commissioner of Collegiate Education, dated 30-07-2001, an appeal was filed by the management and that appeal has been

disposed of by proceedings dated 29-04-2004 on the ground that the promotion of the petitioner as Principal is not feasible of compliance as the management of the college has been taken over by the Government and the request of the management is rejected.

The selection of the writ petitioner itself is not in accordance with the Rules or administrative instructions governing the selection of a Principal. In the procedure contemplated in G.O.Ms.No.127 Education dated 07-06-1993 which is applicable for consideration of the promotion for the post of Principal, the seniority of the fifth respondent has not considered as Principal. Even the selection of the writ petitioner as a Principal is subject to the approval of the competent authority, the competent authority has not approved the same in view of the fact that the selection was not made in accordance with the procedure contemplated in the relevant government orders. Therefore, the question of approval of the promotion of the petitioner as Principal cannot be given effect to. The consequential relief of applying U.G.C. scales to the petitioner for the post of the Principal from 07-03-2001 does not arise in view of the fact that the same has not been approved by the competent authority. The question of compelling respondents to approve the promotion of the petitioner as Principal does not arise in view of the fact that his selection was not in accordance with the Rules.

Therefore, the two writ petitions are totally devoid of merit and accordingly they are dismissed. In the circumstances, no order as to costs.

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JUSTICE K.C.BHANU

Date: 13-07-2005

YCR

To

1. The Secretary, Higher Education, Secretariat, Hyderabad.

2 The Commissioner of Collegiate Education, Nampally, Hyderabad.

3 The Regional Joint Director of Higher Education, Kishanpura, Warangal

4. 2 CCs to G.P. for Higher Education, High Court Buildings, Hyderabad (OUT)

5. 2 C.D. copies.